Supreme Court of the United States

OCTOBER TERM, 1934.

No. 567.

SPIELMAN MOTOR SALES CO. INC.,
Complainant-Appellant,

vs.

WILLIAM C. DODGE, as District Attorney of New York County, State of New York,
Defendant-Appellee.

MOTION FOR CONTINUANCE.

Now comes the undersigned, Attorney General of New York State, representing the State of New York, and upon the annexed affidavit of Henry Epstein, Solicitor General, prays that the appeal in the above entitled proceeding, now pending as number 567 on the October 1934 Calendar, be continued and passed to the April Term of this Honorable Court, to be heard with the appeal in the case of United States versus Belcher, now pending as number 628 of the October Term.

All of which is respectfully urged by

JOHN J. BENNETT, JR.,
Attorney General,
New York State,
Office and P. O. Address,
Capitol, Albany, New York,

HENRY EPSTEIN,
Solicitor General,
Solicitors for State of New York.

March 2, 1935.

AFFIDAVIT FOR CONTINUANCE.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1934.

No. 567.

SPIELMAN MOTOR SALES CO. INC.,
Complainant-Appellant,

vs.

WILLIAM C. DODGE, as District Attorney of New York County, State of New York,
Defendant-Appellee.

State of New York,
County of New York—ss.:

HENRY EPSTEIN, being duly sworn, deposes and says:

Deponent is the Solicitor General of New York State, duly appointed to said position, and is acquainted with the steps heretofore taken in the above entitled action. Deponent is informed that the said appeal is set down to be heard in the March Term of this Honorable Court. The record and briefs of appellant were not received by the Attorney General until February 28th, 1935. The amended or supplemental record was not received until March 1st, containing the findings and conclusions and therein the said findings were not in all cases noted as "found" or "refused". It has been necessary to correct the same since receipt of the said supplemental transcript. It will be extremely difficult, if not impos-

sible, for the Attorney General adequately to brief said matter for argument this Term.

Conference with representatives of the National Recovery Administration reveals that the case of United States versus Belcher will appear on the April Calendar, also involving the National Industrial Recovery Act and its Constitutional validity. By passing the pending appeal, which involves a State Act (Chapter 781, L. 1933, New York) in aid of the National Industrial Recovery Act, to the April Term, the Solicitor General of the United States will be afforded an opportunity to intervene herein as amicus if he so desires, and will bring both cases, with complementary phases of the entire National Industrial Recovery Act, before the Court at one time.

There is a further and weighty consideration to the above reasons. The Court of Appeals of New York now has pending before it the case of Sabatini versus Andrews, wherein the validity of the State Statute is questioned and wherein the Appellate Division of the Supreme Court, First Department, sustained the State Act. There is pending in the Appellate Division, Third Department, an appeal in Darweger versus Staats, et al., in which the lower court declared the State Act invalid. A decision in the latter is momentarily expected and an appeal will probably be heard in the Court of Appeals in March, preparations by both parties having been made to that end. By passing the instant appeal, this Honorable Court will have the advantage of a determination of the State's highest court on a State Statute under the State Constitution, which is the basic issue presented herein.

The State of New York, by its Governor, was served with proceedings in the within action; one of its statutes is attacked; the Attorney General ap-

peared, was deemed a party and was heard in the Statutory Court below. It is respectfully urged that like consideration be accorded its within petition for a continuance.

All of which is submitted in support of the petition herein.

HENRY EPSTEIN,
Solicitor General,
New York State,
Solicitor.

Sworn to before me this
2nd day of March, 1935.

JOHN J. MANGAN,
Notary Public.
N. Y. Co. Clk. No. 337, Reg. No. 5-M-240.
Kings Co. Clk. No. 86, Reg. No. 5333.
Term expires March 30, 1935.